

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANK FLUELLEN

FILED

CIVIL ACTION

v.

JAN 31 2013

NO. 12-6751

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

JOHN KERESTES, et al.,

ORDER

AND NOW this 31st day of January, 2013, upon consideration of the Report and Recommendation of Magistrate Judge Timothy R. Rice (Dkt. No. 4) and reviewing petitioner Frank Fluellen's objections thereto (Dkt. No. 6) and Fluellen's Motion for Inspection and Discovery (Dkt. No. 5), I find that Fluellen's objections to the Report and Recommendation are a restatement of the issues raised in his underlying petition for habeas corpus relief and are without merit; it further appearing after de novo review of this matter that Magistrate Judge Rice's Report and Recommendation correctly determined the legal and factual¹ issues presented in the petition for habeas corpus relief, IT IS ORDERED that Magistrate Judge Rice's Report and Recommendation is APPROVED and ADOPTED;

IT IS FURTHER ORDERED that Fluellen's objections to Magistrate Judge Rice's Report and Recommendation are OVERRULED;

IT IS FURTHER ORDERED that Fluellen's Motion for Inspection and Discovery is DENIED.

¹ I note only that there appears to be a typographical error in Judge Rice's report that does not change my conclusions. Judge Rice writes that "[t]he trial court sentenced Fluellen to life imprisonment for his first-degree murder conviction." Dkt. No. 4. ECF p. 3. It appears that Fluellen was convicted of second-degree murder, as the Report states in all other references to this conviction. Dkt. No. 4. ECF p. 1, 4, 5-7.

IT IS FURTHER ORDERED that the Clerk of Court shall close this matter for statistical purposes.


THOMAS N. O'NEILL, JR., J.